



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 03 2013

OFFICE OF WATER

INTERIM RESPONSE

April 3, 2013

Ms. Eve C. Gartner, Esq.
Earthjustice
156 William St., Suite 800
New York, NY 10038-5326

RE: Freedom of Information Act Request EPA-HQ-2012-001337
(Previously HQ-FOI-01980-12)

This letter is in response to your Freedom of Information Act (FOIA) request on behalf of Earthjustice, received on September 12, 2012.

As agreed upon, EPA asked its principal staff involved in developing the reporting rule or its withdrawal if they could recall any emails regarding the reporting rule submitted to EPA by: The American Farm Bureau Federation, The National Pork Producers Council, The National Cattlemen's Beef Association, The United Egg Producers, The U.S. Poultry & Egg Association, The National Council of Farmer Cooperatives, The National Milk Producers Federation, The National Chicken Council, the National Turkey Federation, The National Corn Growers Association, or any other agricultural trade association. EPA also asked these same staff members if they could recall any emails exchanged with non-governmental organizations or individuals (such as agricultural industry representatives) or state personnel regarding the completeness, accuracy, or accessibility of state files, or individual facilities.

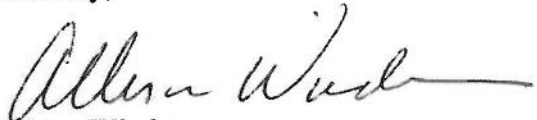
Enclosed you will find a compact disk with documents responsive to your request. We have withheld portions of five of the emails pursuant to FOIA Exemption 6, and withheld a conference call number in one email as not responsive.

You may appeal this denial to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460, Email: hqfoia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W. Room 6416J, Washington D.C., 20004. Your appeal must be made

in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOIA number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Please contact Becky Mitschele at (202) 564-6418 should you have any questions concerning this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Allison Wiedeman", followed by a horizontal line.

Allison Wiedeman
Chief, Rural Branch
Water Permits Division

Enclosures:

Compact disk (CD)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

April 4, 2013

Eve C. Gartner, Esq.
Earthjustice
156 William St., Suite 800
New York, NY 10038-5326

Re: Amended Freedom of Information Act Response # 2012-1337 and 2012-1516

Dear Ms. Gartner:

The purpose of this letter is to provide to you an amended response to the above-referenced Freedom of Information Act (FOIA) requests for data the U.S. Environmental Protection Agency (EPA) collected from states regarding concentrated animal feeding operations (CAFOs), to explain the reasons why this release was amended, and to request that you return the original disk and destroy any copies of the disks or electronic or paper files containing information provided in the EPA's original FOIA response dated February 4, 2013.

Following concerns raised by the original response to your FOIA requests, the EPA has conducted a comprehensive and thorough review of the material released. We have determined that, of the twenty-nine states¹ for which the EPA released information, all of the information from nineteen of the states was either available to the public on the EPA's or state websites, is subject to mandatory disclosure under state or federal law, or does not contain data that implicated a privacy interest; the data from these nineteen states is therefore not subject to withholding under the privacy protections of FOIA Exemption 6. However, the EPA has determined that some personal information received from the ten remaining states² is subject to Exemption 6. The EPA is taking the follow-up actions described below to prevent further dissemination of that information.

BACKGROUND

Exemption 6 of the FOIA protects from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). After answering the threshold question of whether the information is "personnel and medical files and similar files," an agency must determine whether a protectable privacy interest exists.³

¹ The twenty-nine states are: Alabama, Arkansas, Arizona, Colorado, Florida, Georgia, Iowa, Illinois, Indiana, Louisiana, Maryland, Maine, Michigan, Missouri, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Wisconsin, and Wyoming.

² The remaining ten states are: Arizona, Colorado, Georgia, Indiana, Illinois, Michigan, Montana, Nebraska, Ohio, and Utah.

³ *Multi Ag. Media LLC v. U.S. Dep't of Agriculture*, 515 F.3d 1224, 1229-30 (D.C. Cir. 2008).

If no substantial, more than *de minimis*, privacy interest is found, the information at issue must be disclosed. If a substantial privacy interest exists, the public interest must be weighed against the privacy interest in nondisclosure.⁴ Information may only be withheld if the privacy interest outweighs the public interest in disclosure.⁵

Exemption 6 does not extend privacy protection to information that is well known or widely available within the public domain.⁶ Because the EPA could not rely on Exemption 6 to justify withholding information that has been "officially acknowledged" or is in the "public domain,"⁷ the EPA appropriately released information contained on publicly available websites or subject to mandatory disclosure requirements of federal or state permitting programs. Similarly, there is not a substantial privacy interest in information that, under federal or state permitting program requirements, *must* be publicly noticed and/or available.⁸ Therefore, Exemption 6 does not permit withholding information from the public that, by law, the public has the right to know. Because the information described above is already in the public domain, there is not a substantial privacy interest that would authorize the EPA to withhold the information under Exemption 6. Finally, the privacy interest in Exemption 6 does not extend to information that relates to corporations and businesses.⁹ Courts view an individual's expectation of privacy as diminished with regard to matters in which he or she is acting in a business capacity.

Some personal information received from ten of the twenty-nine states was not on EPA or state websites or subject to mandatory disclosure under federal or state law. The EPA has thoroughly evaluated every data element from each of these states and concluded that personal names, phone numbers, email addresses, individual mailing addresses (as opposed to business addresses) and some notes related to personal matters implicate a substantial privacy interest that outweighs any public interest in disclosure. Therefore, the EPA is taking the follow-up actions described further below with regard to that information.

EPA'S AMENDED FOIA RESPONSE

After careful review of the state CAFO data responsive to the FOIA requests, the EPA is amending its FOIA response and providing you with a new version of this response enclosed herein. This amended response contains data for twenty-nine states (the same states included in the original

⁴ Dep't of Air Force v. Rose, 425 U.S. 352, 372 (1976).

⁵ Dep't of Defense v. Federal Labor Relations Ass'n, 510 U.S. 487, 497 (1997).

⁶ Trentadue v. Integrity Comm., 501 F.3d 1215, 1234 (10th Cir. 2007) (concluding that the Inspector General's substantive response to the Integrity Committee's questions should be released because the information is a public document that was included in the record of the appeal; thus subsequent disclosure would not invade the individual's privacy rights at all.).

⁷ David v. U.S. Dep't of Justice, 968 F.2d 1276 (D.C. Cir. 1992) (citing Afshar v. Dep't of State, 702 F.2d 1125, 1130-34 (D.C. Cir. 1983)).

⁸ See 33 U.S.C. § 1342(j) (requiring that "[a] copy of each [NPDES] permit application and each [NPDES] permit ... be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction."); and 33 U.S.C. § 1342(a)(1), (b)(3) (NPDES permits may only be issued following a public hearing, and states implementing NPDES programs must provide for public notice and opportunity for a public hearing on all permit applications). See also, Arizona's Water Quality Control Statute, Ariz. Rev. Stat. Ann. § 49-205(B); Georgia's Land Disposal and Permit Requirements, Ga. Comp. R. & Regs. 391-3-6-.11; North Dakota's Control of Pollution from Animal Feeding Operations, Public Participation, N.D. Admin. Code 33-16-03.1-13; Oregon's Permit Procedures for Confined Animal Feeding Operations Program, Or. Admin. R. 603-074-0012.

⁹ Sims v. CIA, 642 F.2d 562 n. 74 (D.C. Cir. 1980); Nat'l Parks and Conservation Ass'n v. Kleppe, 547 F.2d 673, 686 n. 44 (D.C. Cir. 1976) ("[Exemption 6] has not been extended to protect the privacy interests of business corporations."). The U.S. Supreme Court has regularly referred Exemption 6 as involving an "individual's right of privacy." Fed'l Communications Comm'n v. AT&T, 131 S.Ct. 1177 (2011) (citing Department of State v. Ray, 502 U.S. 164, 175 (1991)).

response) but redacts portions of the data for ten states. As discussed above, the EPA determined that redacting data from the remaining nineteen states is not necessary or appropriate because the information is entirely publicly available on websites or contains information from the federal NPDES or state permitting programs, which is required by federal or state law to be available to the public. Furthermore, the EPA is withholding portions of records, including portions of spreadsheets from ten states, pursuant to Exemption 6. The portions include telephone numbers, email addresses, and notations that relate to personal matters. They also include the names and addresses of individuals (as opposed to business facility names and locations, though facility names that include individuals' names have been redacted). We believe that this amended FOIA response continues to serve its intended purpose to provide basic location and other information about animal feeding operations, in order to serve the public interest of ensuring that the EPA effectively implements its programs to protect water quality, while addressing the privacy interests of the agricultural community.

In addition to the items redacted above, this amended response, as was the case for the original response, does not include certain documents, or portions of documents, which have been determined to be exempt from mandatory disclosure pursuant to Exemption 5, 5 U.S.C. § 552(b)(5) ("inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency") and 40 C.F.R. § 2.105(a)(5). The documents the EPA has withheld pursuant to this exemption include materials that would be protected under the attorney-client privilege and deliberative process privilege. An amended itemized list of the records withheld, and reasons for withholding them, explained herein, is provided as an attachment to this letter.

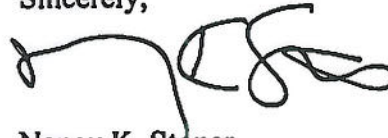
NEXT STEPS

I am requesting that you return all copies of the original response disk and that any disks or electronic or paper files containing information from the original response be destroyed. Please return all copies of the original data to: Becky Mitschele, EPA, MC 4203M, 1200 Pennsylvania Ave., Washington, DC 20460.

This letter concludes our response to your request. You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the tracking number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

If you have any questions concerning this response please contact Becky Mitschele at (202) 564-6418.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy K. Stoner', with a stylized, looping flourish at the end.

Nancy K. Stoner
Acting Assistant Administrator

ATTACHMENT: Itemized List by Category of Withheld Material

Date Range	Description of Document/Document Category	Exemption	Approximate (Approx.) Number of Documents	Approx. Number of Pages
5/1/2012 to 11/1/2012	Internal, pre-decisional drafts of documents, including briefing documents or notes during state conference calls, that refer or relate to the completeness, accuracy, or public accessibility of CAFO information maintained by states.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	146	293
2/1/2012 to 11/1/2012	Internal, pre-decisional drafts of documents that refer or relate to how EPA should gather CAFO information and EPA's progress on obtaining existing CAFO information.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	88	206
5/15/2012 to 7/30/2012	Internal, pre-decisional drafts of documents that refer or relate to the Memorandum of Understanding between EPA and the Association of Clean Water Administrators.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	18	39
10/15/2012 to 11/1/2012	Internal, pre-decisional drafts of briefing documents, desk statements, communication strategies, internal agency workgroup meeting materials, website revisions, Federal Register Notice versions, talking points, EPA office to office memoranda, and/or comment summary documents that refer or relate to the Agency's withdrawal of the proposed NPDES CAFO Reporting Rule.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	222	3,264
5/01/12 to 12/01/12	Records containing facility-specific information that includes telephone numbers, email address, names and addresses of individuals, and notations related to personal matters for AFOs/CAFOs.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	15	45



February 28, 2013

By Email: hq.foia@epa.gov

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667 FAX (202) 566-2147
E-mail: hq.foia@epa.gov

Re: Freedom of Information Request for Records Reflecting Industry Response to Release of Documents Relating to Withdrawal of CAFO Reporting Rule, and for Records Reflecting Other FOIA Requests Related to the Withdrawal of the CAFO Reporting Rule

Dear Freedom of Information Officer:

Earthjustice submits this request for records in accordance with the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In accordance with FOIA, please provide us with the following records relating to the rule proposed by the Environmental Protection Agency ("EPA") on October 21, 2011, under section 308 of the Clean Water Act, to collect information about concentrated animal feeding operations (CAFOs) (the "CAFO Reporting Rule"), and the withdrawal of the CAFO Reporting Rule announced by EPA on July 20, 2012:

1. All unredacted correspondence or other records received by EPA from any private party, corporation, non-profit organization, or government agency or body, on or after February 15, 2013, regarding EPA's release of documents relating to concentrated animal feeding operations and/or other livestock farming operations, pursuant to FOIA to Earthjustice, Natural Resources Defense Council (NRDC) and/or Pew Charitable Trusts (Pew), and any records relating to such correspondence received by EPA.
2. All unredacted records reflecting any communications, written or verbal, between the EPA and any private party, corporation, non-profit organization, or government agency or body, on or after September 1, 2012, relating to or referencing the FOIA requests submitted by Earthjustice (HQ-FOI-01980-12), and separately by NRDC and/or Pew, to EPA regarding the CAFO Reporting Rule and/or the 2012 withdrawal of the CAFO Reporting Rule, including documents reflecting EPA's collection of information about CAFOs from state regulators.
3. All unredacted records reflecting any communications, written or verbal, between the EPA and any private party, corporation or non-profit organization, on or after October

17, 2012, relating to or referencing EPA's release under FOIA of documents related to the CAFO Reporting Rule and/or the 2012 withdrawal of the CAFO Reporting Rule, including documents reflecting EPA's collection of information about CAFOs from state regulators, to Earthjustice, the NRDC and/or Pew.

4. All records constituting or referencing a request under FOIA for records related to the CAFO Reporting Rule and/or the 2012 withdrawal of the CAFO Reporting Rule, including documents reflecting or relating to EPA's collection of information about CAFOs from state regulators, received by EPA since July 20, 2012, and any letter or email from EPA directly responding to such FOIA request. This request seeks only FOIA requests, EPA's written responses to said FOIA requests, and any records created by or received by EPA specific to those requests. The request does not seek any documents released by EPA in response to said FOIA requests; EPA need not produce the FOIA request submitted to it by Earthjustice, or EPA's responses to Earthjustice.

The use of the word "record" above includes, but is not limited to, documents in all forms (including electronic), information, emails, faxes, letters, comments, reports, summaries of telephone conversations, handwritten notes, meeting minutes, or any other materials.

The use of the word "unredacted" above means that we are seeking full disclosure of all information in the requested record. In the event that you determine that you can disclose only some of the information contained in a record that falls within the scope of this request, please provide us with a copy of the record with only the information that you have determined to be properly treated as confidential redacted.

If any information requested herein was, but is no longer, in EPA's possession or subject to its control, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred voluntarily or involuntarily to others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding and authorization for such disposition of it and state the date or approximate date of it.

If you claim that any of the foregoing information is exempt from mandatory disclosure, we respectfully request that you:

- (1) Provide an index of all documents containing the requested information, reflecting the date, author, addressee, number of pages, and subject matter of such documents;
- (2) State the exemption you deem to be applicable to each information request;
- (3) State with particularity the reason why such exemption is applicable to each information request;
- (4) Examine each information request to determine if reasonably segregable non-exempt information exists which may be released after redacting information deemed to be exempt; and
- (5) Exercise your discretion to release such records notwithstanding the availability of a basis for withholding.

INSTRUCTIONS FOR RECORD DELIVERY

To the extent that the requested records are available in a readily accessible electronic format, we would prefer to receive the documents electronically, by email. If electronic copies are unavailable, we will accept paper copies. Please send records to Eve C. Gartner at egartner@earthjustice.org, or mail them to:

Eve C. Gartner, Esq.
Earthjustice
156 William St., Suite 800
New York, NY 10038-5326

As FOIA requires, we expect your response as expeditiously as possible, and no later than within twenty working days of your receipt of this request. In the event that you have any questions concerning the type of materials we are interested in receiving, please contact me by email or by telephone at 212-845-7381.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Eve C. Gartner".

Eve C. Gartner



EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

February 28, 2013

By Email: hq.foia@epa.gov

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667 FAX (202) 566-2147
E-mail: hq.foia@epa.gov

Re: Freedom of Information Request for Records Reflecting Industry Response to Release of Documents Relating to Withdrawal of CAFO Reporting Rule

Dear Freedom of Information Officer:

Earthjustice submits this request for records in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Please provide us with any correspondence received by EPA from one or more agricultural industry groups on or after February 15, 2013, regarding EPA's release of documents relating to concentrated animal feeding operations and/or other livestock farming operations, pursuant to FOIA, to Earthjustice, Natural Resources Defense Council (NRDC) and/or Pew Charitable Trusts (Pew).

INSTRUCTIONS FOR RECORD DELIVERY

To the extent that the requested record is accessible in an electronic format, please provide the documents electronically, by email. If electronic copies are unavailable, we will accept paper copies. Please send records to Eve C. Gartner at egartner@earthjustice.org, or mail them to:

Eve C. Gartner, Esq.
Earthjustice
156 William St., Suite 800
New York, NY 10038-5326

As FOIA requires, we expect your response as expeditiously as possible, and no later than within twenty working days of your receipt of this request. In the event that you have any questions concerning the type of materials we are interested in receiving, please contact me by email or by telephone at 212-845-7381.

Thank you for your assistance in this matter.

Sincerely,

Eve C. Gartner



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

April 30, 2013

Eve C. Gartner, Esq.
Earthjustice
156 William St., Suite 800
New York, NY 10038-5326

RE: Amended Freedom of Information Act Response # 2012-1337 (previously HQ-FOI-01980-12)

Dear Ms. Gartner:

The purpose of this letter is to provide you a second amended response to the above-referenced Freedom of Information Act (FOIA) request for data the U.S. Environmental Protection Agency (EPA) collected from states regarding Concentrated Animal Feeding Operations (CAFOs). The enclosed disk contains largely the same information released in the first amended response. The information released in this second amended response, however, reflects an additional quality-assurance review that EPA has conducted to ensure that requestors have obtained all responsive information, but none that is subject to protection pursuant to FOIA Exemption 6. 5 U.S.C. § 552(b)(6). As a result of this review, the EPA has added several responsive documents that were inadvertently omitted and redacted some additional privacy-related information related to facilities in Montana and Nebraska.


This amended response, as was the case for the previous responses, does not include certain documents or portions of documents, which have been determined to be exempt from mandatory disclosure pursuant to FOIA Exemption 5, 5 U.S.C. § 552(b)(5) ("inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency") and 40 C.F.R. § 2.105(a). The withheld Exemption 5 documents include materials that would be protected under the attorney-client privilege and deliberative process privilege. See attachment to this letter.

I am requesting that you return the previously released disks (from the February 4 and April 4 release) and that any copy of electronic or paper files of the February 4 or April 4 release be destroyed. Please return the previously released disks to: Becky Mitschele, EPA, MC 4203M, 1200 Pennsylvania Ave., Washington DC 20460. We also request that you confirm that you have destroyed all copies of this information.

This letter concludes our response to your request. You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Rom 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the tracking number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Please contact me at (202) 564-0901 or Becky Mitschele at (202) 564-6418 if you have any questions concerning this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Allison P. Wiedeman", with a long horizontal flourish extending to the right.

Allison P. Wiedeman, Chief

Rural Branch

Office of Wastewater Management

Attachment

ATTACHMENT: Itemized List by Category of Withheld Material

Date Range	Description of Document/Document Category	Exemption	Approximate (Approx.) Number of Documents	Approx. Number of Pages
5/1/2012 to 11/1/2012	Internal, pre-decisional drafts of documents, including briefing documents or notes during state conference calls, that refer or relate to the completeness, accuracy, or public accessibility of CAFO information maintained by states.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	146	293
2/1/2012 to 11/1/2012	Internal, pre-decisional drafts of documents that refer or relate to how EPA should gather CAFO information and EPA's progress on obtaining existing CAFO information.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	88	206
5/15/2012 to 7/30/2012	Internal, pre-decisional drafts of documents that refer or relate to the Memorandum of Understanding between EPA and the Association of Clean Water Administrators.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	18	39
10/15/2012 to 11/1/2012	Internal, pre-decisional drafts of briefing documents, desk statements, communication strategies, internal agency workgroup meeting materials, website revisions, Federal Register Notice versions, talking points, EPA office to office memoranda, and/or comment summary documents that refer or relate to the Agency's withdrawal of the proposed NPDES CAFO Reporting Rule.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	222	3,264
5/01/12 to 12/01/12	Records containing facility-specific information that includes telephone numbers, email address, names and addresses of individuals, and notations related to personal matters for AFOs/CAFOs.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	15	45



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 06 2013

OFFICE OF WATER

Ms. Eve C. Gartner, Esq.
Earthjustice
156 William St., Suite 800
New York, NY 10038-5326

RE: Freedom of Information Act Request EPA-HQ-2013-004082

This letter is a complete response to your Freedom of Information Act request submitted on February 28, 2013, relating to responses to the Agency's release of documents under the FOIA request on the CAFO Reporting Rule.

The enclosed CD contains all documents that are responsive to your request. We did not withhold any responsive records. As a point of clarification, we are not including all correspondence between EPA and Earthjustice because, as we discussed, Earthjustice already possesses those records.

You may appeal this denial to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460, Email: hqfoia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W. Room 6416J, Washington D.C., 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOIA number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Please contact Becky Mitschele at (202) 564-6418 should you have any questions concerning this matter.

Sincerely,

A handwritten signature in cursive script, reading "Allison Wiedeman".

Allison Wiedeman
Chief, Rural Branch
Water Permits Division

Enclosures:
Compact disk (CD)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 04 2013

OFFICE OF
WATER

PARTIAL DENIAL LETTER

February 4, 2013

Ms. Eve C. Gartner, Esq.
EarthJustice
156 William St., Suite 800
New York, NY 10038-5326

RE: Freedom of Information Act Request EPA-HQ-2012-001337
(Previously HQ-FOI-01980-12)

This is in response to your Freedom of Information Act (FOIA) request on behalf of EarthJustice, received on September 12, 2012.

Per conference call and email communications, we agreed to transmit all records responsive to your FOIA request items 3-6, by February 4, 2013. We appreciate the extension of time to review and transmit email records related to items 1 and 2 in your FOIA request. We agreed to transmit email records by February 20, 2013.

Enclosed you will find a compact disk with documents responsive to your request for the February 4, 2013 deadline. We are unable to provide you with the documents, or portions of documents, which have been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. § 552(b)(5) ("inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency") and 40 C.F.R. § 2.105(a)(5) ("inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than in litigation with the affected agency"). The documents EPA has withheld pursuant to this exemption include materials that would be protected under the attorney-client privilege and the executive deliberative process privilege.

An itemized list by category (including date range, number of documents, and approximate number of pages) of the withheld material along with the basis (i.e. exemption) for withholding is enclosed.

You may appeal this denial to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460, Email: hqfoia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand

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Please contact Becky Mitschele at (202) 286-6418 should you have any questions concerning this matter.

Sincerely,

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Allison Wiedeman
Chief, Rural Branch
Water Permits Division

Enclosures:

Itemized list, excluding email records, by category of withheld material
Compact disk (CD)

Itemized List, Excluding Email Records, by Category of Withheld Material

Item *	Date Range	Description of Document/Document Category	Exemption	Approximate (Approx.) Number of Documents	Approx. Number of Pages
A	5/1/2012 to 11/1/2012	Internal, pre-decisional drafts of documents, including briefing documents or notes during state conference calls, that refer or relate to the completeness, accuracy, or public accessibility of CAFO information maintained by states.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	146	293
B	2/1/2012 to 11/1/2012	Internal, pre-decisional drafts of documents that refer or relate to how EPA should gather CAFO information and EPA's progress on obtaining existing CAFO information.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	88	206
C	5/15/2012 to 7/30/2012	Internal, pre-decisional drafts of documents that refer or relate to the Memorandum of Understanding between EPA and the Association of Clean Water Administrators.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	18	39
D	10/15/2012 to 11/1/2012	Internal, pre-decisional drafts of briefing documents, desk statements, communication strategies, internal agency workgroup meeting materials, website revisions, Federal Register Notice versions, talking points, EPA office to office memoranda, and/or comment summary documents that refer or relate to the Agency's withdrawal of the proposed NPDES CAFO Reporting Rule.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	222	3,264

* Item column corresponds to the enclosed spreadsheet which shows document titles



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 16 2012

OFFICE OF
WATER

Eve C. Gartner, Esq.
Earthjustice
156 William St., Suite 800
New York, NY 10038-5326

RE: Freedom of Information Act Request HQ-FOI-01980-12

Dear Ms. Gartner:

This letter is a partial response to your Freedom of Information Act request submitted on September 12, 2012. You requested records related to the proposed CAFO Reporting Rule and the withdrawal of the proposed CAFO Reporting Rule announced on July 20, 2012.

During our conversation on September 19, you agreed to limit the scope of items 1, 2, and 5 in the request to records from October 14, 2011 onward. Additionally, you agreed to exclude EPA communications with Earthjustice from the scope of item 2. You also agreed to grant an extension for us to respond to your request to January 21, 2013.

The enclosed CD contains a number of documents we think are responsive to your request. Once you have had a chance to review them, we would like to speak with you to determine if the request can be further honed.

Please contact me at (202) 564-0744 or Becky Mitschele at (202) 564-6418 if you have any questions concerning this matter.

Sincerely,

A handwritten signature in black ink, which appears to read "George Utting". The signature is fluid and cursive, with a long horizontal stroke at the end.

George Utting
Acting Branch Chief, Rural Branch

From: <Mitschele.Becky@epamail.epa.gov>
To: "Eve C. Gartner" <egartner@earthjustice.org>
Cc: <Kupchan.Simma@epamail.epa.gov>; <Utting.George@epamail.epa.gov>
Sent: Thursday, January 31, 2013 11:25 AM
Subject: Conference Call Yesterday (1/30/13)

To: Eve C. Gartner <egartner@earthjustice.org>

Cc: Kupchan.Simma@epamail.epa.gov, Utting.George@epamail.epa.gov

Hello Eve,

Thank you with meeting with us today, January 30, 2013. Per our conference call, we agreed to transmit all releasable records responsive to your FOIA request for items 3 â€“ 6 by Monday, February 4, 2013. This will include a table by category of the documents being withheld.

We also agreed to conduct the following actions, in exchange for which EPA's production of records responsive to items 1 and 2 in your FOIA request will be complete.

A. EPA asks its principal staff involved in developing the reporting rule or its withdrawal if they can recall any emails regarding the reporting rule submitted to EPA by: The American Farm Bureau Federation, The National Pork Producers Council, The National Cattlemenâ€™s Beef Association, The United Egg Producers, The U.S. Poultry & Egg Association, The National Council of Farmer Cooperatives, The National Milk Producers Federation, The National Chicken Council, the National Turkey Federation, The National Corn Growers Association, or any other agricultural trade association.

B. EPA asks its principal staff involved in developing the reporting rule or its withdrawal if they can recall any emails exchanged with non-governmental organizations or individuals (such as agricultural industry representatives) or state personnel regarding:

â€¢ The completeness, accuracy, or accessibility of state files, or

â€¢ Individual facilities.

C. If there are emails fitting the description in A or B, above, EPA produces any such emails by February 20, 2013.

EPA will send a CD to EarthJustice by the dates specified above, and then will upload records into FOIAonline a few days later.

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

From: <Mitschele.Becky@epamail.epa.gov>
To: "Eve C. Gartner" <egartner@earthjustice.org>
Cc: <Utting.George@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>;
<Kupchan.Simma@epamail.epa.gov>
Sent: Tuesday, December 04, 2012 12:52 PM
Subject: Earthjustice FOIA - CAFO Reporting

To: Eve C. Gartner <egartner@earthjustice.org>

Cc: Utting.George@epamail.epa.gov, Yager.Scott@epamail.epa.gov, Kupchan.Simma@epamail.epa.gov

Hello Eve,

Thanks for speaking with us about Earthjustice's FOIA request for information related to the withdrawal of the proposed CAFO Reporting Rule.

We appreciated the opportunity to discuss EPA's partial response to the FOIA, which was sent on 10/16/12.

Per our conversation on Monday, December 3, 2012, we agreed to schedule a follow-up meeting in late January 2013. We currently are scheduled to have that meeting in the afternoon on January 30, 2013. The purpose of that meeting is to discuss EPA's progress on collecting state data and discuss the next steps for completing EPA's response.

In order to prepare for this call, we agreed that EPA will focus on identifying, collecting, and analyzing available CAFO information, including from state permitting authorities and some state departments of agriculture. In the meantime, we also have agreed that EPA does not need to send you any materials prior to the meeting on the 30th.

Please let me know if you have any questions or corrections to what we discussed.

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

From: <Mitschele.Becky@epamail.epa.gov>
To: <egartner@earthjustice.org>
Cc: <Yager.Scott@epamail.epa.gov>; <Kupchan.Simma@epamail.epa.gov>
Sent: Friday, September 14, 2012 11:32 AM
Subject: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

To: egartner@earthjustice.org

Cc: Yager.Scott@epamail.epa.gov, Kupchan.Simma@epamail.epa.gov

Hello Ms. Eve Gartner,

I have received your FOIA request about records pertaining to the CAFO Reporting Rule proposal and final action. I will be coordinating the collection of such records.

I would like to set up a conference call next Wednesday (9/19/12) from 4 pm to 5 pm EST to discuss the scope of the record request.

Does this time work for you? If so, we can call you directly at the number provided in the request - (212) 791-1881 ext 8222. Alternatively, if this does not work with your schedule, could you suggest a better timeframe?

Thanks,

Becky Mitschele
Physical Scientist
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Wednesday, April 24, 2013 12:43 PM
To: Mitschele, Becky; Kupchan, Simma
Cc: 'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org
Subject: follow up call

Dear Becky and Simma—

Are you available for a follow-up to our conversation from last Wednesday? I have discussed this with Jon Devine and Claire Althouse from NRDC and they would like to participate as well.

Thanks,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
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Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
www.earthjustice.org

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*please consider the environment before printing

From: <Mitschele.Becky@epamail.epa.gov>
To: "Eve C. Gartner" <egartner@earthjustice.org>
Cc: <Kupchan.Simma@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>;
<Utting.George@epamail.epa.gov>
Sent: Monday, February 04, 2013 5:42 PM
Attach: Spreadsheet with the documents withheld.xlsx; Partial Denial Letter to Earthjustice.pdf
Subject: Partial Denial Letter - FOIA Interim Response #2_EarthJustice - All Responsive Documents Except Email Records

To: Eve C. Gartner <egartner@earthjustice.org>

Cc: Kupchan.Simma@epamail.epa.gov, Yager.Scott@epamail.epa.gov, Utting.George@epamail.epa.gov

Hi Eve,

Please find attached a letter in response to your FOIA Request as well as a list of documents withheld. You will be getting a CD with electronic records of all releasable documents, and I will be uploading these documents into FOIAonline.

We are working on compiling the email records per our previous email exchanges. Thank you again for working with us as we transmit all responsive email records to you in a few weeks. If you have any questions, please feel free to call.

(See attached file: Partial Denial Letter to Earthjustice.pdf)

(See attached file: Spreadsheet with the documents withheld.xlsx)

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

From: <Mitschele.Becky@epamail.epa.gov>
To: "Eve C. Gartner" <egartner@earthjustice.org>
Cc: <Kupchan.Simma@epamail.epa.gov>; <Utting.George@epamail.epa.gov>;
<Yager.Scott@epamail.epa.gov>
Sent: Wednesday, October 17, 2012 4:50 PM
Attach: Partial Response to 308 Rule FOIA.pdf
Subject: Partial Response to FOIA HQ-FOI-01980-12

To: Eve C. Gartner <egartner@earthjustice.org>

Cc: Kupchan.Simma@epamail.epa.gov, Utting.George@epamail.epa.gov, Yager.Scott@epamail.epa.gov

Hello Eve,

We have mailed our partial response to the FOIA requesting copies of records related to the proposal and withdrawal of the CAFO Reporting Rule.

Please find attached the cover letter that will be enclosed with the CD that we are mailing. Once you have had a chance to review the documents, we can set up a meeting to discuss next steps.

I was thinking sometime during the week of November 12th, 2012 before the Thanksgiving Holiday, but feel free to counter with a timeframe that works best for you.

(See attached file: Partial Response to 308 Rule FOIA.pdf)

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Monday, April 29, 2013 10:04 AM
To: Penman, Crystal; Mitschele, Becky
Subject: RE: Background info for Meeting on 4/29

Hello-

I don't know anything about the agenda for this meeting. It is being set up by Becky Mitschele.
Eve

Eve C. Gartner
Staff Attorney
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156 William Street
Suite 800
New York, New York 10038
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F: 212-918-1556
www.earthjustice.org

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From: Penman, Crystal [mailto:Penman.Crystal@epa.gov]
Sent: Friday, April 26, 2013 4:22 PM
To: Eve C. Gartner
Subject: Background info for Meeting on 4/29

Can you email any background information for Ellen to review for this meeting on Monday? Thank you.

Crystal Penman
Office of Water
1201 Constitution Ave, NW
Washington, DC 20004
202-564-3318
Penman.Crystal@EPA.gov

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Monday, April 22, 2013 3:14 PM
To: Mitschele, Becky
Cc: Kupchan, Simma; Wiedeman, Allison; Yager, Scott
Subject: RE: CAFO FOIA - 2012-001337

Follow Up Flag: Follow up
Flag Status: Completed

Becky –

As we discussed, would you also send me the excel spreadsheet entitled “Spreadsheet with the documents withheld,” which was on the Feb 4 disk, but not the April 4 disk?

Thank you,
Eve

Eve C. Gartner
Staff Attorney
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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]
Sent: Thursday, April 18, 2013 4:19 PM
To: Eve C. Gartner
Cc: Kupchan, Simma; Wiedeman, Allison; Yager, Scott
Subject: CAFO FOIA - 2012-001337

Hi Eve,

Please find attached two additional documents that are responsive to your FOIA request. These documents were inadvertently left off the amended disk. If you have any questions, please give me a call.

Thanks,
Becky Mitschele
Physical Scientist
U.S. EPA, Office of Wastewater Management
(202) 564-6418

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Monday, April 22, 2013 11:36 AM
To: Mitschele, Becky
Cc: Kupchan, Simma; Wiedeman, Allison; Yager, Scott
Subject: RE: CAFO FOIA - 2012-001337

Thank you.
Eve

Eve C. Gartner
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From: Mitschele, Becky [<mailto:Mitschele.Becky@epa.gov>]
Sent: Thursday, April 18, 2013 4:19 PM
To: Eve C. Gartner
Cc: Kupchan, Simma; Wiedeman, Allison; Yager, Scott
Subject: CAFO FOIA - 2012-001337

Hi Eve,

Please find attached two additional documents that are responsive to your FOIA request. These documents were inadvertently left off the amended disk. If you have any questions, please give me a call.

Thanks,
Becky Mitschele
Physical Scientist
U.S. EPA, Office of Wastewater Management
(202) 564-6418

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Monday, March 11, 2013 5:43 PM
To: Mitschele, Becky
Subject: RE: CAFO FOIA - Industry Correspondance and EPA's Response (Nancy Stoner Letter)

Thank you Becky.

Can you update me on the status of the release of the responsive emails. Per your email cut and pasted below, I had expected to receive these documents in late February. I'm not clear on whether a disk was lost in the mail, or if it was not sent.

Regards,
Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
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On Feb 19, 2013, at 1:13 PM, "Mitschele, Becky" <Mitschele.Becky@epa.gov> wrote:

Hello Eve,

Per my voicemail, may I please have more time (two days) to send you the responsive emails? We transition over the weekend to a new email system and new workplace and is taking a lot of time.

Can I please mail out the CD with the respective emails on Thursday? Please let me know as soon as possible if this would be OK

Thanks,

Becky Mitschele
Physical Scientist
US EPA, Office of Wastewater Management
202-564-6418

From: Mitschele, Becky [<mailto:Mitschele.Becky@epa.gov>]

Sent: Monday, March 11, 2013 5:21 PM

To: Eve C. Gartner

Cc: Gilinsky, Ellen; Frace, Sheila; Hill, Randy; Nagle, Deborah; Frazer, Brian; Kupchan, Simma; Levine, MaryEllen; WIEDEMAN, ALLISON; Utting, George; Yager, Scott; Bittleman, Sarah; Nguyen, Quoc

Subject: CAFO FOIA - Industry Correspondance and EPA's Response (Nancy Stoner Letter)

Hi Eve,

Please see attached the records related to your recent FOIA requests (# 2013-004082 and 2013-004070) for industry correspondence to Bob Perciasepe about EPA's release of CAFO information and EPA's subsequent response to the industry letter.

Thanks,

Becky Mitschele

U.S. Environmental Protection Agency

Office of Water, Office of Wastewater Management, Water Permits Division

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Wednesday, April 17, 2013 4:16 PM
To: Mitschele, Becky
Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison
Subject: RE: Call to discuss CAFO FOIA

Becky and Simma –

In thinking back over our call, I realize there's an additional issue I need to raise with you. Could you give me a call, ideally today? I will not be in the office Thurs. or Fri.

Thanks,
Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]
Sent: Tuesday, April 16, 2013 4:03 PM
To: Eve C. Gartner
Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison
Subject: RE: Call to discuss CAFO FOIA

Would 3:30 pm work?

From: Eve C. Gartner [mailto:egartner@earthjustice.org]
Sent: Tuesday, April 16, 2013 4:00 PM
To: Mitschele, Becky
Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison
Subject: RE: Call to discuss CAFO FOIA

Hi Becky –

Is there any chance of doing the call tomorrow before 11, or between 2 and 5?

Thanks,
Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
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From: Mitschele, Becky [<mailto:Mitschele.Becky@epa.gov>]
Sent: Tuesday, April 16, 2013 3:57 PM
To: Mitschele, Becky; Eve C. Gartner
Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison
Subject: Call to discuss CAFO FOIA

Hi Eve,

Can we speak tomorrow at 11 am or Thursday at 12:30 pm to discuss the four documents?

I can call you directly, or I can set up a conference line since I know you want another person at EarthJustice to attend.
Please let me know if one of these times work for you.

Thanks,
Becky Mitschele
US EPA, Office of Water
202-564-6418

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Tuesday, April 16, 2013 4:08 PM
To: Mitschele, Becky
Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison
Subject: RE: Call to discuss CAFO FOIA

Yes, and you can just call my office. 212-845-7381.

Thank you.

Eve

Eve C. Gartner
Staff Attorney
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Suite 800
New York, New York 10038
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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]
Sent: Tuesday, April 16, 2013 4:03 PM
To: Eve C. Gartner
Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison
Subject: RE: Call to discuss CAFO FOIA

Would 3:30 pm work?

From: Eve C. Gartner [mailto:egartner@earthjustice.org]
Sent: Tuesday, April 16, 2013 4:00 PM
To: Mitschele, Becky
Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison
Subject: RE: Call to discuss CAFO FOIA

Hi Becky –

Is there any chance of doing the call tomorrow before 11, or between 2 and 5?

Thanks,

Eve

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From: Mitschele, Becky [<mailto:Mitschele.Becky@epa.gov>]
Sent: Tuesday, April 16, 2013 3:57 PM
To: Mitschele, Becky; Eve C. Gartner
Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison
Subject: Call to discuss CAFO FOIA

Hi Eve,

Can we speak tomorrow at 11 am or Thursday at 12:30 pm to discuss the four documents?

I can call you directly, or I can set up a conference line since I know you want another person at EarthJustice to attend. Please let me know if one of these times work for you.

Thanks,
Becky Mitschele
US EPA, Office of Water
202-564-6418

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Tuesday, April 16, 2013 4:00 PM
To: Mitschele, Becky
Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison
Subject: RE: Call to discuss CAFO FOIA

Hi Becky –

Is there any chance of doing the call tomorrow before 11, or between 2 and 5?

Thanks,

Eve

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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]
Sent: Tuesday, April 16, 2013 3:57 PM
To: Mitschele, Becky; Eve C. Gartner
Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison
Subject: Call to discuss CAFO FOIA

Hi Eve,

Can we speak tomorrow at 11 am or Thursday at 12:30 pm to discuss the four documents?

I can call you directly, or I can set up a conference line since I know you want another person at EarthJustice to attend. Please let me know if one of these times work for you.

Thanks,
Becky Mitschele
US EPA, Office of Water
202-564-6418

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Thursday, May 09, 2013 3:33 PM
To: Mitschele, Becky
Subject: RE: Clarifying Scope of Correspondance Records

Becky –
We would like to see those emails and correspondence.
Thank you.
Eve

Eve C. Gartner
Staff Attorney
Earthjustice
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Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
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From: mitschele.becky@epa.gov [mailto:mitschele.becky@epa.gov]
Sent: Thursday, May 09, 2013 2:44 PM
To: Eve C. Gartner
Subject: Clarifying Scope of Correspondance Records

05/09/2013 02:41 PM
FOIA Request: EPA-HQ-2013-004070

Hi Eve,

We are working on your FOIA request referenced above as well as 2013-004082.

I wanted to check that if it would be OK to exclude emails and correspondence between EPA and NRDC/Pew.

Thanks,

Becky Mitschele

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: <Mitschele.Becky@epamail.epa.gov>
Cc: <Utting.George@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>;
 <Kupchan.Simma@epamail.epa.gov>
Sent: Monday, December 10, 2012 5:29 PM
Subject: RE: Earthjustice FOIA - CAFO Reporting

Becky and Team –

Thanks for this summary of our conversation. The only item I would add to your email is that we agreed to postpone a discussion of how to handle emails and documents that EPA asserts are privileged and/or deliberative (some of which may be emails).

Best,
 Eve

Eve C. Gartner
 Staff Attorney
 Earthjustice
 156 William Street
 Suite 800
 New York, New York 10038
 T: 212-845-7381
 F: 212-918-1556
www.earthjustice.org

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*please consider the environment before printing

From: Mitschele.Becky@epamail.epa.gov [mailto:Mitschele.Becky@epamail.epa.gov]
Sent: Tuesday, December 04, 2012 12:53 PM
To: Eve C. Gartner
Cc: Utting.George@epamail.epa.gov; Yager.Scott@epamail.epa.gov; Kupchan.Simma@epamail.epa.gov
Subject: Earthjustice FOIA - CAFO Reporting

Hello Eve,

Thanks for speaking with us about Earthjustice's FOIA request for information related to the withdrawal of the proposed CAFO Reporting Rule.

We appreciated the opportunity to discuss EPA's partial response to the FOIA, which was sent on 10/16/12.

Per our conversation on Monday, December 3, 2012, we agreed to schedule a follow-up meeting in late January 2013. We currently are scheduled to have that meeting in the afternoon on January 30, 2013. The purpose of that meeting is to discuss EPA's progress on collecting state data and discuss the next steps for completing EPA's response.

In order to prepare for this call, we agreed that EPA will focus on identifying, collecting, and analyzing available CAFO information, including from state permitting authorities and some state departments of agriculture. In the meantime, we also have agreed that EPA does not need to send you any materials prior to the meeting on the 30th.

Please let me know if you have any questions or corrections to what we discussed.

Thanks,
 Becky Mitschele
 Water Permits Division, OWM
 U.S. Environmental Protection Agency
 Tel: 202.564.6418

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Monday, March 04, 2013 3:14 PM
To: Mitschele, Becky
Subject: RE: Final Response - Emails - CAFO FOIA

Dear Becky –

We have not received the CD with emails responsive to our FOIA Request No. HQ-FOI-01980-12, which, per the email from you below, I understood you would be sending out on February 21st. Was the CD actually sent?

Thank you very much,

Eve Gartner

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
www.earthjustice.org

Because the earth needs a good lawyer

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*please consider the environment before printing

From: Eve C. Gartner
Sent: Tuesday, February 19, 2013 2:00 PM
To: Mitschele, Becky
Subject: Re: Final Response - Emails - CAFO FOIA

Yes, that would be fine.

Eve

On Feb 19, 2013, at 1:13 PM, "Mitschele, Becky" <Mitschele.Becky@epa.gov> wrote:

Hello Eve,

Per my voicemail, may I please have more time (two days) to send you the responsive emails? We transition over the weekend to a new email system and new workplace and is taking a lot of time.

Can I please mail out the CD with the respective emails on Thursday? Please let me know as soon as possible if this would be OK

Thanks,

Becky Mitschele
Physical Scientist
US EPA, Office of Wastewater Management
202-564-6418

Yager, Scott

From: Eve C. Gartner [gartner@earthjustice.org]
Sent: Monday, March 04, 2013 3:14 PM
To: Mitschele, Becky
Subject: RE: Final Response - Email - CARG FOIA

Dear Becky -
We have not received the CD with email response to our FOIA Request No. HQ-FOI-01980-12, which, per the email from you below, I understood you would be sending out on February 12th. Was the CD actually sent?
Thank you very much,
Eve Gartner

Eve C. Gartner
Staff Attorney
Earthjustice
158 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1535
www.earthjustice.org

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From: Eve C. Gartner
Sent: Tuesday, February 19, 2013 2:00 PM
To: Mitschele, Becky
Subject: RE: Final Response - Email - CARG FOIA

yes, that would be fine.
Eve

On Feb 19, 2013, at 1:13 PM, "Mitschele, Becky" <Mitschele.Becky@epa.gov> wrote:

Hello Eve,

Per my voicemail, may I please have more time (two days) to send you the (response email)? We transitioned over the weekend to a new email system and new workplace and is taking a lot of time.
Can I please mail out the CD with the respective emails on Thursday? Please let me know as soon as possible if this would be OK

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Tuesday, February 19, 2013 2:00 PM
To: Mitschele, Becky
Subject: Re: Final Response - Emails - CAFO FOIA

Yes, that would be fine.

Eve

On Feb 19, 2013, at 1:13 PM, "Mitschele, Becky" <Mitschele.Becky@epa.gov<mailto:Mitschele.Becky@epa.gov>> wrote:

Hello Eve,

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Can I please mail out the CD with the respective emails on Thursday? Please let me know as soon as possible if this would be OK

Thanks,

Becky Mitschele
Physical Scientist
US EPA, Office of Wastewater Management
202-564-6418

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: <Mitschele.Becky@epamail.epa.gov>
Sent: Sunday, September 16, 2012 5:20 PM
Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Hello Ms. Mitschele

Wednesday at 4 ET works well for me. I will be at the number in your email. Many thanks for your timely response.

Eve Gartner

Eve C. Gartner
 Staff Attorney
 Earthjustice
 156 William Street
 Suite 800
 New York, New York 10038
 T: 212-791-1881 ext. 8222
 F: 212-918-1556
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From: Becky Mitschele [Mitschele.Becky@epamail.epa.gov]
Sent: Friday, September 14, 2012 12:32 PM
To: Eve C. Gartner
Cc: Scott Yager; Simma Kupchan
Subject: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Hello Ms. Eve Gartner,

I have received your FOIA request about records pertaining to the CAFO Reporting Rule proposal and final action. I will be coordinating the collection of such records.

I would like to set up a conference call next Wednesday (9/19/12) from 4 pm to 5 pm EST to discuss the scope of the record request.

Does this time work for you? If so, we can call you directly at the number provided in the request - (212) 791-1881 ext 8222. Alternatively, if this does not work with your schedule, could you suggest a better timeframe?

Thanks,

Becky Mitschele
Physical Scientist
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

From: "Eve C. Garner" <garner@earthjustice.org>
To: "Mitschele Becky" <becky@epamail.epa.gov>
Sent: Sunday, September 16, 2012 2:30 PM
Subject: RE: FOIA Request for info related to CAFE Reporting Rule Withdrawal

Hello Ms. Mitschele,
Wednesday at 4 ET works well for me. I will be at the number in your email. Many thanks for your timely response.
Eve Garner

Eve C. Garner
Staff Attorney
Earthjustice
155 William Street
Suite 800

New York, New York 10038
T: 212-791-1881 ext. 8222
F: 212-618-1376
www.earthjustice.org

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From: Becky Mitschele [mailto:becky@epamail.epa.gov]
Sent: Friday, September 14, 2012 12:33 PM
To: Eve C. Garner
Cc: Scott Yager; Sumana Kuperman
Subject: FOIA Request for info related to CAFE Reporting Rule Withdrawal

Hello Ms. Eve Garner,

I have received your FOIA request about records pertaining to the CAFE Reporting Rule proposal and final action. I will be coordinating the collection of such records.

I would like to set up a conference call next Wednesday (9/19/12) from 4 pm to 5 pm EST to discuss the scope of the record request.

Does this time work for you? If so, we can call you directly at the number provided in the request - (212) 791-1881 ext 8222. Alternatively, if this does not work with your schedule, could you suggest a better time?

Thanks,

From: <Mitschele.Becky@epamail.epa.gov>
To: "Eve C. Gartner" <egartner@earthjustice.org>
Cc: <Utting.George@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>;
 <Kupchan.Simma@epamail.epa.gov>
Sent: Tuesday, September 25, 2012 4:46 PM
Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

To: "Eve C. Gartner" <egartner@earthjustice.org>

Cc: Utting.George@epamail.epa.gov, Yager.Scott@epamail.epa.gov, Kupchan.Simma@epamail.epa.gov

Eve,

Thanks for speaking with us about the FIOA request for information related to the CAFO Reporting Rule final action and proposal.

Per our conversation on Wednesday, 9/19/12, we discussed limiting the scope of the FOIA request by the following:

Item 1. "All records, including communications, shared or otherwise maintained between EPA and any other governmental agency" will be limited to records from 10/14/11 onward.

Item 2. "All records reflecting any communication, written or verbal, between the EPA and any private party, corporation or non-profit organization" will be limited to records from 10/14/11 onward and will exclude EPA communications with Earthjustice.

Item 4. "All records, including but not limited to, all communications and records identifying, discussing, mentioning, describing, reporting or analyzing, the July 2012 memorandum of understanding" will be limited to communications between the EPA and ACWA.

Item 5. "All records relating to how EPA will obtain information about CAFOs in states for which current site-specific information about CAFOs is not available on the internet" will be limited to records from 10/14/11 onward.

You also kindly agreed to grant an extension for our response. We agreed that we would share the records in two phases. The first deadline, 10/17/12, would include the "key" documents that we think are most responsive to your request. The second deadline, 1/21/13, would be the comprehensive response. We also agreed to check in with each other after you have a chance to review the documents shared on 10/17/12 to discuss potentially further honing the remaining request.

Lastly, you should have received notice that your FOIA request has been granted the fee waiver. This means that you will not be billed for any of the costs to fulfill this FOIA request. I had misinformation about the 100 hour-cut off and apologize for any confusion.

Becky Mitschele
 Water Permits Division, OWM
 U.S. Environmental Protection Agency
 Tel: 202.564.6418

"Eve C. Gartner" ---09/16/2012 06:21:44 PM---Hello Ms. Mitschele Wednesday at 4 ET works well for me. I will be at the number in your email. M

From: "Eve C. Gartner" <egartner@earthjustice.org>
 To: Becky Mitschele/DC/USEPA/US@EPA
 Date: 09/16/2012 06:21 PM
 Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Hello Ms. Mitschele
 Wednesday at 4 ET works well for me. I will be at the number in your email. Many thanks for your timely response.
 Eve Gartner

Eve C. Gartner
 Staff Attorney
 Earthjustice
 156 William Street
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From: Becky Mitschele [Mitschele.Becky@epamail.epa.gov]
 Sent: Friday, September 14, 2012 12:32 PM
 To: Eve C. Gartner
 Cc: Scott Yager; Simma Kupchan
 Subject: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Hello Ms. Eve Gartner,

I have received your FOIA request about records pertaining to the CAFO Reporting Rule proposal and final action. I will be coordinating the collection of such records.

I would like to set up a conference call next Wednesday (9/19/12) from 4 pm to 5 pm EST to discuss the scope of the record request.

Does this time work for you? If so, we can call you directly at the number provided in the request - (212) 791-1881 ext 8222. Alternatively, if this does not work with your schedule, could you suggest a better timeframe?

Thanks,

Becky Mitschele
 Physical Scientist
 Water Permits Division, OWM
 U.S. Environmental Protection Agency
 Tel: 202.564.6418

1/9/2014

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: <Mitschele.Becky@epamail.epa.gov>
Cc: <Utting.George@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>;
 <Kupchan.Simma@epamail.epa.gov>
Sent: Thursday, September 27, 2012 3:04 PM
Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Dear Becky –

Thank you for this email and my apologies for the delay in getting back to you. We are in agreement with respect to the limitations for Items 1, 2, and 5, and regarding the extensions of time for response.

With respect to Item 4, however, my notes do not reflect that we agreed to any limitation with respect to this request. Our intent with respect to Item 4 was to obtain not only communications between EPA and ACWA, but also any other records in the possession of EPA that discuss or analyze the July 2012 Memorandum of Understanding between EPA and ACWA. I apologize if we had a miscommunication. Should we get back on the phone to discuss item 4?

Also, thank you very much for letting me know about the fee waiver.

Many thanks,

Eve

Eve C. Gartner
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From: Becky Mitschele [mailto:Mitschele.Becky@epamail.epa.gov]
Sent: Tuesday, September 25, 2012 5:46 PM
To: Eve C. Gartner
Cc: George Utting; Scott Yager; Simma Kupchan
Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Eve,

Thanks for speaking with us about the FIOA request for information related to the CAFO Reporting Rule final action and proposal.

1/9/2014

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You also kindly agreed to grant an extension for our response. We agreed that we would share the records in two phases. The first deadline, 10/17/12, would include the "key" documents that we think are most responsive to your request. The second deadline, 1/21/13, would be the comprehensive response. We also agreed to check in with each other after you have a chance to review the documents shared on 10/17/12 to discuss potentially further honing the remaining request.

Lastly, you should have received notice that your FOIA request has been granted the fee waiver. This means that you will not be billed for any of the costs to fulfill this FOIA request. I had misinformation about the 100 hour-cut off and apologize for any confusion.

Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

"Eve C. Gartner" ---09/16/2012 06:21:44 PM---Hello Ms. Mitschele Wednesday at 4 ET works well for me. I will be at the number in your email. M

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: Becky Mitschele/DC/USEPA/US@EPA
Date: 09/16/2012 06:21 PM
Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Hello Ms. Mitschele
Wednesday at 4 ET works well for me. I will be at the number in your email. Many thanks for your timely response.
Eve Gartner

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-791-1881 ext. 8222
F: 212-918-1556
www.earthjustice.org

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From: <Mitschele.Beky@epamail.epa.gov>
To: "Eve C. Gartner" <egartner@earthjustice.org>
Cc: <Utting.George@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>;
 <Kupchan.Simma@epamail.epa.gov>
Sent: Friday, October 05, 2012 3:17 PM
Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

To: "Eve C. Gartner" <egartner@earthjustice.org>

Cc: Utting.George@epamail.epa.gov, Yager.Scott@epamail.epa.gov, Kupchan.Simma@epamail.epa.gov

Hi Eve,

Thanks for your reply.

We are on schedule with the first set of documents. We are discussing the scope of item #4 internally, and we will keep you in the loop on whether we need to discuss it further with you.

I will be out of the office next week. If you have any questions, George, Simma, or Scott our ORISE fellow, (emails above) can answer any questions while I am out of the office as I will be checking email sporadically.

Thanks,
 Becky Mitschele
 Water Permits Division, OWM
 U.S. Environmental Protection Agency
 Tel: 202.564.6418

▼ "Eve C. Gartner" ---09/27/2012 04:04:19 PM---Dear Becky â€œ Thank you for this email and my apologies for the delay in getting back to you. We are

From: "Eve C. Gartner" <egartner@earthjustice.org>
 To: Becky Mitschele/DC/USEPA/US@EPA
 Cc: George Utting/DC/USEPA/US@EPA, Scott Yager/DC/USEPA/US@EPA, Simma Kupchan/DC/USEPA/US@EPA
 Date: 09/27/2012 04:04 PM
 Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

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Also, thank you very much for letting me know about the fee waiver.

Many thanks,
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From: Becky Mitschele [<mailto:Mitschele.Becky@epamail.epa.gov>]
Sent: Tuesday, September 25, 2012 5:46 PM
To: Eve C. Gartner
Cc: George Utting; Scott Yager; Simma Kupchan
Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Eve,

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You also kindly agreed to grant an extension for our response. We agreed that we would share the records in two phases. The first deadline, 10/17/12, would include the "key" documents that we think are most responsive to your request. The second deadline, 1/21/13, would be the comprehensive response. We also agreed to check in with each other after you have a chance to review the documents shared on 10/17/12 to discuss potentially further honing the remaining request.

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Becky Mitschele
 Water Permits Division, OWM
 U.S. Environmental Protection Agency

1/9/2014

Tel: 202.564.6418

"Eve C. Gartner" ---09/16/2012 06:21:44 PM---Hello Ms. Mitschele Wednesday at 4 ET works well for me. I will be at the number in your email. M

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: Becky Mitschele/DC/USEPA/US@EPA
Date: 09/16/2012 06:21 PM
Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

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Eve Gartner

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From: Becky Mitschele [Mitschele.Becky@epamail.epa.gov]
Sent: Friday, September 14, 2012 12:32 PM
To: Eve C. Gartner
Cc: Scott Yager; Simma Kupchan
Subject: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Hello Ms. Eve Gartner,

I have received your FOIA request about records pertaining to the CAFO Reporting Rule proposal and final action. I will be coordinating the collection of such records.

I would like to set up a conference call next Wednesday (9/19/12) from 4 pm to 5 pm EST to discuss the scope of the record request.

Does this time work for you? If so, we can call you directly at the number provided in the request - (212) 791-1881 ext 8222. Alternatively, if this does not work with your schedule, could you suggest a better timeframe?

1/9/2014

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Wednesday, May 01, 2013 5:10 PM
To: Mitschele, Becky; Kupchan, Simma
Cc: 'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org; Wiedeman, Allison; Yager, Scott
Subject: RE: follow up call

Dear Becky and Simma –

In light of the second amended responsive disk that we received today, we and NRDC no longer think it is necessary to have the call tomorrow. Let us know if EPA sees that differently.

Thank you,
Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]
Sent: Wednesday, April 24, 2013 1:12 PM
To: Eve C. Gartner; Kupchan, Simma
Cc: 'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org; Wiedeman, Allison; Yager, Scott
Subject: RE: follow up call

Hi Eve,

Yes we are available to meet with you and NRDC. Would sometime between 1 and 4 pm work next Thursday (5/1/13)? If not, could you let us know when a good time is for you both.

Thanks,
Becky Mitschele
US EPA
202-564-6418

From: Eve C. Gartner [mailto:egartner@earthjustice.org]
Sent: Wednesday, April 24, 2013 12:43 PM

To: Mitschele, Becky; Kupchan, Simma
Cc: 'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org
Subject: follow up call

Dear Becky and Simma—

Are you available for a follow-up to our conversation from last Wednesday? I have discussed this with Jon Devine and Claire Althouse from NRDC and they would like to participate as well.

Thanks,
Eve

Eve C. Gartner
Staff Attorney
Earthjustice
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Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Wednesday, April 24, 2013 2:05 PM
To: Mitschele, Becky; Kupchan, Simma
Cc: 'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org; Wiedeman, Allison; Yager, Scott
Subject: RE: follow up call

How about 3:00 ET on Thursday 5/2? Will you circulate a call-in number?

Thanks,

Eve

Eve C. Gartner
Staff Attorney
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www.earthjustice.org

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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]
Sent: Wednesday, April 24, 2013 1:12 PM
To: Eve C. Gartner; Kupchan, Simma
Cc: 'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org; Wiedeman, Allison; Yager, Scott
Subject: RE: follow up call

Hi Eve,

Yes we are available to meet with you and NRDC. Would sometime between 1 and 4 pm work next Thursday (5/1/13)? If not, could you let us know when a good time is for you both.

Thanks,
Becky Mitschele
US EPA
202-564-6418

From: Eve C. Gartner [mailto:egartner@earthjustice.org]
Sent: Wednesday, April 24, 2013 12:43 PM
To: Mitschele, Becky; Kupchan, Simma
Cc: 'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org
Subject: follow up call

Dear Becky and Simma—

Are you available for a follow-up to our conversation from last Wednesday? I have discussed this with Jon Devine and Claire Althouse from NRDC and they would like to participate as well.

Thanks,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
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Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Monday, April 29, 2013 4:50 PM
To: Mitschele, Becky
Subject: RE: Meeting about CAFO FOIA

Becky –

Is this meeting now permanently canceled, or do you anticipate trying to reschedule it?

Thank you.

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]
Sent: Thursday, April 25, 2013 12:59 PM
To: Eve C. Gartner
Subject: Meeting about CAFO FOIA

Hi Eve,

I was trying to set something up this afternoon, but management has been called away. Do you have time on Monday for a quick meeting?

Becky Mitschele
Physical Scientist
U.S. EPA, Office of Wastewater Management
(202) 564-6418

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Thursday, April 25, 2013 1:31 PM
To: Mitschele, Becky
Subject: RE: Meeting about CAFO FOIA

Sure. Anytime other than 11-12.
Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]
Sent: Thursday, April 25, 2013 12:59 PM
To: Eve C. Gartner
Subject: Meeting about CAFO FOIA

Hi Eve,

I was trying to set something up this afternoon, but management has been called away. Do you have time on Monday for a quick meeting?

Becky Mitschele
Physical Scientist
U.S. EPA, Office of Wastewater Management
(202) 564-6418

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Thursday, March 14, 2013 5:18 PM
To: Mitschele, Becky
Cc: Wiedeman, Allison; Kupchan, Simma
Subject: RE: New FOIA requests - Release of CAFO records in response to FOIA Request

Dear Becky –

I'm sorry for my delay in responding to your email. You are correct that our FOIA requests (2013-004070 and 2013-004082) seek the records you describe below. With the caveat that your use of the term correspondence includes all records (as that term is used in FOIA) reflecting communications.

In addition to those records, item 4 of our request seeks any other FOIA requests for records and responses, relating to the CAFO Reporting Rule or its withdrawal received by EPA since July 20, 2012. We are only seeking the correspondence between EPA and the FOIA requester, not the responsive documents. You need not release to us Earthjustice's own correspondence or responses to it.

Thank you very much,
Eve

Eve C. Gartner
Staff Attorney
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New York, New York 10038
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From: Mitschele, Becky [<mailto:Mitschele.Becky@epa.gov>]
Sent: Thursday, March 14, 2013 9:21 AM
To: Eve C. Gartner
Cc: Wiedeman, Allison; Kupchan, Simma
Subject: New FOIA requests - Release of CAFO records in response to FOIA Request

Hello Eve,

In follow-up to your conversation with Ellen Gilinski, can you please confirm that EPA will complete FOIA requests (2013-004070 and 2013-004082) by releasing the following records:

From 9/1/2012, provide all correspondence between EPA and outside parties that discuss EPA receiving a FOIA request from EarthJustice (2012-001337) and a FOIA request from NRDC/Pew (2013-001516). Such correspondence would include EPA's correspondence with state permitting authorities and agriculture industry groups providing notification that the Agency released records related to the data collection effort as well as any incoming requests to review the documents EPA released.

From 2/15/13 to 2/28/13, provide all correspondence between EPA and outside parties that discuss EPA's responses to the FOIA request from EarthJustice (2012-001337) and the FOIA request from NRDC/Pew (2013-001516). This includes the documents EPA previously sent regarding industry's concerns about the release of information as well as the Agency's response to the industry letter.

Thanks,
Becky Mitschele
Physical Scientist
U.S. EPA, Office of Wastewater Management
(202) 564-6418

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: <Mitschele.Becky@epamail.epa.gov>
Cc: <Kupchan.Simma@epamail.epa.gov>; <Utting.George@epamail.epa.gov>;
 <Yager.Scott@epamail.epa.gov>
Sent: Thursday, October 18, 2012 8:38 AM
Subject: RE: Partial Response to FOIA HQ-FOI-01980-12

Dear Becky –

Thank you for the heads up about the CD. I will be out of the office for much of the week of Nov. 12th, but would be available on Nov. 15th and could talk anytime that day. Is there a time that day that works for you?

Best,

Eve

Eve C. Gartner
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From: Mitschele.Becky@epamail.epa.gov [mailto:Mitschele.Becky@epamail.epa.gov]
Sent: Wednesday, October 17, 2012 5:51 PM
To: Eve C. Gartner
Cc: Kupchan.Simma@epamail.epa.gov; Utting.George@epamail.epa.gov; Yager.Scott@epamail.epa.gov
Subject: Partial Response to FOIA HQ-FOI-01980-12

Hello Eve,

We have mailed our partial response to the FOIA requesting copies of records related to the proposal and withdrawal of the CAFO Reporting Rule.

Please find attached the cover letter that will be enclosed with the CD that we are mailing. Once you have had a chance to review the documents, we can set up a meeting to discuss next steps.

I was thinking sometime during the week of November 12th, 2012 before the Thanksgiving Holiday, but feel free to counter with a timeframe that works best for you.

(See attached file: Partial Response to 308 Rule FOIA.pdf)

Thanks,
 Becky Mitschele
 Water Permits Division, OWM
 U.S. Environmental Protection Agency
 Tel: 202.564.6418

From: Eve C. Gartner, <egartner@earthjustice.org>
 To: <Mitschele.Becy@epamail.epa.gov>
 Cc: <Kochan.Bimma@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>
 Sent: Thursday, October 18, 2012 8:55 AM
 Subject: RE: Partial Response to FOIA HQ-FOI-01880-12

Dear Becky -

Thank you for the heads up about the CD. I will be out of the office for much of the week of Nov. 12th, but would be available on Nov. 15th and could talk anytime that day. Is there a time that day that works for you?

Best,

Eve

Eve C. Gartner
 Staff Attorney
 Earthjustice
 122 William Street
 Suite 100
 New York, New York 10038
 T: 212-645-3841
 F: 212-618-1540
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Message 1224241 - 1/9/2014 1:13 PM - 1/9/2014 1:13 PM

From: Mitschele.Becy@epamail.epa.gov [mailto:Mitschele.Becy@epamail.epa.gov]
 Sent: Wednesday, October 17, 2012 5:51 PM
 To: Eve C. Gartner
 Cc: <Kochan.Bimma@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>
 Subject: Partial Response to FOIA HQ-FOI-01880-12

Hello Eve,

We have mailed our partial response to the FOIA requesting copies of records related to the proposal and withdrawal of the CARO Reporting Rule.

Please find attached the cover letter that will be enclosed with the CD that we are mailing. Once you have had a chance to review the documents, we can set up a meeting to discuss next steps.

I was thinking sometime during the week of November 12th/2012 before the Thanksgiving Holiday, but feel free to counter with a timeframe that works best for you.

1/9/2014

From: <Mitschele.Becky@epamail.epa.gov>
To: "Eve C. Gartner" <egartner@earthjustice.org>
Cc: <Utting.George@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>;
 <Kupchan.Simma@epamail.epa.gov>
Sent: Thursday, October 18, 2012 11:55 AM
Subject: RE: Partial Response to FOIA HQ-FOI-01980-12

To: "Eve C. Gartner" <egartner@earthjustice.org>

Cc: Utting.George@epamail.epa.gov, Yager.Scott@epamail.epa.gov, Kupchan.Simma@epamail.epa.gov

Hi Eve,

Would 4 - 5 pm on the Nov. 15th work? We can use EPA's conference line 1-866-299-3188, code 202-564-6418, if this time works.

Thanks,
 Becky Mitschele
 Water Permits Division, OWM
 U.S. Environmental Protection Agency
 Tel: 202.564.6418

"Eve C. Gartner" ---10/18/2012 09:39:34 AM---Dear Becky - Thank you for the heads up about the CD. I will be out of the office for much of the w

From: "Eve C. Gartner" <egartner@earthjustice.org>
 To: Becky Mitschele/DC/USEPA/US@EPA
 Cc: Simma Kupchan/DC/USEPA/US@EPA, George Utting/DC/USEPA/US@EPA, Scott Yager/DC/USEPA/US@EPA
 Date: 10/18/2012 09:39 AM
 Subject: RE: Partial Response to FOIA HQ-FOI-01980-12

Dear Becky --

Thank you for the heads up about the CD. I will be out of the office for much of the week of Nov. 12th, but would be available on Nov. 15th and could talk anytime that day. Is there a time that day that works for you?

Best,
 Eve

Eve C. Gartner
 Staff Attorney
 Earthjustice
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 New York, New York 10038
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Sent: Wednesday, October 17, 2012 5:51 PM
To: Eve C. Gartner
Cc: Kupchan.Simma@epamail.epa.gov; Utting.George@epamail.epa.gov; Yager.Scott@epamail.epa.gov
Subject: Partial Response to FOIA HQ-FOI-01980-12

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I was thinking sometime during the week of November 12th, 2012 before the Thanksgiving Holiday, but feel free to counter with a timeframe that works best for you.

(See attached file: Partial Response to 308 Rule FOIA.pdf)

Thanks,
 Becky Mitschele
 Water Permits Division, OWM
 U.S. Environmental Protection Agency
 Tel: 202.564.6418

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: <Mitschele.Becky@epamail.epa.gov>
Sent: Tuesday, November 13, 2012 6:18 PM
Subject: RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

Hi Becky –

It would be best for me to postpone the call until Nov. 28 or later. Would that work for you?

Thanks,

Eve

Eve C. Gartner
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From: Mitschele.Becky@epamail.epa.gov [mailto:Mitschele.Becky@epamail.epa.gov]
Sent: Tuesday, November 13, 2012 9:04 AM
To: Eve C. Gartner
Subject: Reschedule our Thursday Meeting - FIOA for CAFO data?

Hi Eve,

Would it be possible to reschedule our Thursday meeting as I will be working on Hurricane Sandy Response efforts Thursday - Sunday?

I am in the office the following week on 11/19 and 11/20 if you have an hour to touch base on one of those days?

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

From: <Mitschele.Becky@epamail.epa.gov>
To: "Eve C. Gartner" <egartner@earthjustice.org>
Sent: Wednesday, November 14, 2012 2:56 PM
Subject: RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

To: "Eve C. Gartner" <egartner@earthjustice.org>
Thanks, Eve.

We can try to schedule something early in December. Would 12/3 or 12/17 work? Feel free to provide a time and/or date.

Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

"Eve C. Gartner" ---11/13/2012 06:18:25 PM---Hi Becky - It would be best for me to postpone the call until Nov. 28 or later. Would that work for

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: Becky Mitschele/DC/USEPA/US@EPA
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Subject: RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

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From: Mitschele.Becky@epamail.epa.gov [<mailto:Mitschele.Becky@epamail.epa.gov>]

1/9/2014

From: <Mitschele.Becky@epamail.epa.gov>
To: "Eve C. Gartner" <egartner@earthjustice.org>
Sent: Wednesday, November 14, 2012 4:28 PM
Subject: RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

To: "Eve C. Gartner" <egartner@earthjustice.org>

Thank you, Eve. I set up the meeting invite, but in case you can't see the call in information is:

Call in #: 1-866-299-3188; code 202-564-6418

Becky Mitschele
 Water Permits Division, OWM
 U.S. Environmental Protection Agency
 Tel: 202.564.6418

▼ "Eve C. Gartner" ---11/14/2012 03:24:46 PM---Becky â€œ Can we talk at 2 pm ET on 12/3?

From: "Eve C. Gartner" <egartner@earthjustice.org>
 To: Becky Mitschele/DC/USEPA/US@EPA
 Date: 11/14/2012 03:24 PM
 Subject: RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

Becky â€œ

Can we talk at 2 pm ET on 12/3?

Thanks,

Eve

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Subject: RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

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From: Mitschele.Becky@epamail.epa.gov [mailto:Mitschele.Becky@epamail.epa.gov]

Sent: Tuesday, November 13, 2012 9:04 AM

To: Eve C. Gartner

Subject: Reschedule our Thursday Meeting - FIOA for CAFO data?

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I am in the office the following week on 11/19 and 11/20 if you have an hour to touch base on one of those days?

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

1/9/2014

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: <Mitschele.Becky@epamail.epa.gov>
Sent: Wednesday, November 14, 2012 7:14 PM
Subject: RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

Thank you.

Eve C. Gartner
 Staff Attorney
 Earthjustice
 156 William Street
 Suite 800
 New York, New York 10038
 T: 212-845-7381
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Call in #: 1-866-299-3188; code 202-564-6418

Becky Mitschele
 Water Permits Division, OWM
 U.S. Environmental Protection Agency
 Tel: 202.564.6418

[cid:1__=0ABBF025DFE6755D8f9e8a93@epamail.epa.gov]"Eve C. Gartner" ---11/14/2012 03:24:46 PM---Becky – Can we talk at 2 pm ET on 12/3?

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Becky Mitschele
 Water Permits Division, OWM
 U.S. Environmental Protection Agency
 Tel: 202.564.6418

[cid:1_0ABBF025DFE6755D8f9e8a93@epamail.epa.gov]"Eve C. Gartner" ---11/13/2012 06:18:25 PM---Hi Becky - It would be best for me to postpone the call until Nov. 28 or later. Would that work for

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[<mailto:Mitschele.Becky@epamail.epa.gov>]
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Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: <Mitschele.Becky@epamail.epa.gov>; <Utting.George@epamail.epa.gov>; <Kupchan.Simma@epamail.epa.gov>
Cc: <Yager.Scott@epamail.epa.gov>
Sent: Tuesday, January 29, 2013 4:15 PM
Subject: RE: Rescheduled: FOIA with Earth Justice - CAFO Data (Jan 30 02:00 PM EST in call info: 1-866-299-3188; code 202-564-6418)

Hi –

Do you want to move this call to 2 or 2:30? I understood from Simma that we were moving it to 2:30.

Eve

-----Original Appointment-----

From: Becky Mitschele/DC/USEPA/US [<mailto:Mitschele.Becky@epamail.epa.gov>]
Sent: Tuesday, January 29, 2013 4:15 PM
To: Eve C. Gartner; George Utting/DC/USEPA/US; Simma Kupchan/DC/USEPA/US
Cc: Scott Yager/DC/USEPA/US
Subject: Rescheduled: FOIA with Earth Justice - CAFO Data (Jan 30 02:00 PM EST in call info: 1-866-299-3188; code 202-564-6418)
When: Wednesday, January 30, 2013 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: call info: 1-866-299-3188; code 202-564-6418

<< File: ATT00001.htm >> << File: c161448.ics >>

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Thursday, April 04, 2013 12:27 PM
To: Mitschele, Becky
Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison
Subject: RE: your message

Becky –

Can you please provide me with an update on when we will receive the disk of responsive emails per our correspondence below?

Thank you,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
www.earthjustice.org

Because the earth needs a good lawyer

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*please consider the environment before printing

From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]
Sent: Tuesday, March 12, 2013 11:37 AM
To: Eve C. Gartner
Cc: Kupchan, Simma; Yager, Scott; WIEDEMAN, ALLISON
Subject: RE: your message

Thanks, Eve.

I will provide an update soon.

Thanks,
Becky Mitschele
U.S. EPA

From: Eve C. Gartner [mailto:egartner@earthjustice.org]
Sent: Tuesday, March 12, 2013 11:31 AM
To: Mitschele, Becky; Mitschele, Becky
Subject: your message

Dear Becky –

I received your message and appreciate your getting back to me. I am sorry you've been sick. There's no need to talk, but can you let me know once you've mailed me the disk with the responsive emails? If the disk will be mailed later than early next week, can you provide me with a projection on when it will be mailed?

Many thanks,

Eve

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Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Tuesday, January 29, 2013 4:16 PM
To: Mitschele, Becky; Utting, George; Kupchan, Simma
Cc: Yager, Scott
Subject: RE: Rescheduled: FOIA with Earth Justice - CAFO Data (Jan 30 02:00 PM EST in call info: 1-866-299-3188; code 202-564-6418)

Hi –

Do you want to move this call to 2 or 2:30? I understood from Simma that we were moving it to 2:30.

Eve

-----Original Appointment-----

From: Becky Mitschele/DC/USEPA/US [<mailto:Mitschele.Becky@epamail.epa.gov>]

Sent: Tuesday, January 29, 2013 4:15 PM

To: Eve C. Gartner; George Utting/DC/USEPA/US; Simma Kupchan/DC/USEPA/US

Cc: Scott Yager/DC/USEPA/US

Subject: Rescheduled: FOIA with Earth Justice - CAFO Data (Jan 30 02:00 PM EST in call info: 1-866-299-3188; code 202-564-6418)

When: Wednesday, January 30, 2013 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: call info: 1-866-299-3188; code 202-564-6418

<< File: ATT00001.htm >> << File: c161448.ics >>

From: <Mitschele.Becky@epamail.epa.gov>
To: <egartner@earthjustice.org>
Sent: Tuesday, November 13, 2012 9:04 AM
Subject: Reschedule our Thursday Meeting - FIOA for CAFO data?

To: egartner@earthjustice.org

Hi Eve,

Would it be possible to reschedule our Thursday meeting as I will be working on Hurricane Sandy Response efforts Thursday - Sunday?

I am in the office the following week on 11/19 and 11/20 if you have an hour to touch base on one of those days?

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

Yager, Scott

From: Eve C. Gartner [egartner@earthjustice.org]
Sent: Tuesday, March 12, 2013 11:31 AM
To: Mitschele, Becky; Mitschele, Becky
Subject: your message

Dear Becky –

I received your message and appreciate your getting back to me. I am sorry you've been sick. There's no need to talk, but can you let me know once you've mailed me the disk with the responsive emails? If the disk will be mailed later than early next week, can you provide me with a projection on when it will be mailed?

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Eve

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NATURAL RESOURCES DEFENSE COUNCIL

May 6, 2013

Becky Mitschele
U.S. Environmental Protection Agency
Office of Water
Mail Code 4203M
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Freedom of Information Act Response #2013-001516

Dear Ms. Mitschele:

This letter is in response to a letter dated April 30, and received May 3, 2013, from Allison Wiedeman, Chief of the Rural Branch of the Office of Wastewater Management. The letter requests that, with respect to material previously produced under the Freedom of Information Act, the Natural Resources Defense Council "return the previously released disks (from the January 31 and April 4 release) and that any copy of electronic or paper files of the January 31 or April 4 release be destroyed."

NRDC sought information concerning industrial livestock operations because we believe that Americans, in particular those people who live near, or share waterways with, concentrated animal feeding operations have a right to know about these facilities. Specifically, people deserve to know whether the Environmental Protection Agency has sufficient information about these facilities to develop appropriate pollution control requirements for them. And, people are entitled to know things like where CAFOs are, how much waste they generate, how they ensure their waste does not pollute waterways, and whether they are complying with the Clean Water Act. Our interest is not in legitimately private information.

Accordingly, enclosed please find the disk produced to us that accompanied EPA's April 4 letter. NRDC has already returned the disk accompanying EPA's January 31 letter. NRDC has deleted the files on the April 4 disk from our computer system. We also will destroy paper copies, if any, of materials for Nebraska or Montana from the April 4 disk.

Please contact me at (202) 289-2361 if you have any questions concerning this response.

Sincerely,

Jon P. Devine, Jr.
Senior Attorney
Water Program
Natural Resources Defense Council

